

Appendix 1

First systematic studies examining the causes of miscarriage of justice

Recent attempts to examine miscarriage of justice have built on earlier studies including Borchard (1932); Frank and Frank (1957); Du Cann (1960); Radin (1964) and Brandon and Davies (1973). These studies were the first to systematically research miscarriage of justice and to further knowledge on the causes of 'miscarriage'. Borchard (1932) identified 65 British and American miscarriages of justice and suggested that the defendants had been wrongly convicted and were therefore 'innocent' because in certain circumstances a subsequent defendant had been arrested and convicted or, as demonstrated in other cases, new evidence had convinced the court that the wrong person had been convicted. Borchard's (1932) study was important, not least because it was the first systematic research on miscarriage of justice, but similarly because he drew attention to environmental factors that contributed to wrongful conviction. Franks (1957: 213) focussed exclusively on the causes of miscarriage and particularly on the 'unconscious prejudice' of witnesses when giving evidence whilst engaged with the criminal justice system. The study involved 36 cases of wrongful conviction and identified a number of systemic causes including mistaken identity, ineffective disclosure to the defence and the inability of the jury to understand the evidence. The Du Cann (1960) study identified 9 English cases of apparent wrongful conviction and from these the writer advocated changes to the criminal justice system including changes to how evidence should be handled and presented to the jury. The Radin (1964) study examined 80 cases of miscarriage of justice and made a number of important conclusions concerning the causes of wrongful conviction including eyewitness misidentification, police-coerced confessions and inadequate disclosure to the defence. Importantly the study drew attention to the 'game' fought out in the court between the prosecutor and defence. Radin (1964: 35) suggested that the prosecutor saw the trial '...as a kind of game...they are so busy planning how to outwit, outsmart and outmanoeuvre an opponent that they forget that justice is

the sole purpose of the criminal trial.’ Brandon and Davies’ (1973) study involved the review of 70 cases of miscarriage of justice as defined by those whose convictions had been quashed by the CACD or who had received a pardon. The study built on earlier research and attempted to identify recurrent causes of miscarriage of justice.